

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.261 OF 2007

Urmila Harischandra Pal. ... Petitioner
V/s.

The State of Maharashtra & Ors. ... Respondent

Mr. Subhash Jha, Ghanshyam Upadhyay, Ms. Lakshmi Menon i/b. Law Global for the petitioner.

Mrs. A.S. Pai, APP for the State.

**CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.**

DATED : 9th March, 2007.

P.C.

. One Akhilesh Dubey had filed a petition in this Court being Criminal Writ Petition No.1513 of 2006 making a grievance that the case of homicidal death of one Ghanashyam Kori is not being properly investigated by the police. His case was that the police are protecting the culprits. Prayer for transfer of investigation was also made.

2. On 19th October 2006, the Division Bench of this Court directed the Commissioner of Police, Thane

to transfer the investigation concerning death of Ghanashyam Kori to DCP Zone-IV to personally carry on investigation through his team of officers under the direct supervision of Commissioner of Police. The Division Bench further observed that none of the officers of Badlapur Police Station who at the time of commission of offence were posted at Badlapur Police Station should be associated with the investigation of the case. The Division Bench further observed that the Commissioner of Police is expected to get the investigation concluded as early as possible. A direction was given to the Commissioner of Police to get the complaint of witness Manoj Kanta Sharma duly enquired into and if the complicity of the three police personnel is found, take departmental action against them for tampering with the investigation. He was also directed to look into the conduct of the officers of Badlapur Police Station.

3. It appears that pursuant to this order, the investigation was transferred to D.C.P. Zone-IV. We are informed by the learned APP Mrs. Pai that the investigation was carried out as directed by this Court personally by D.C.P. Zone-IV under the direct supervision of the Commissioner of Police. The learned APP states that the complaint of witness Manoj

Kanta Sharma was also duly enquired into.

4. On 24th January 2007, the Division Bench of this Court to which one of us (Mrs. Ranjana Desai, J.) was a party, disposed of Writ Petition No.1513 of 2006 by holding that the grievance of the petitioner had been redressed and it is not necessary to entertain the petition. This Court observed that the action as directed by this Court in its order dated 19.10.2006 has also been taken by the Commissioner of Police. This Court heard the learned counsel for Urmila Pal, wife of accused 1, who is the petitioner herein and who wanted to intervene in the matter. This Court observed that time was given to her to make an application. However, no application was filed by her and hence it was not possible to entertain the intervention application at that stage. The present petition is filed by her. In this petition she has prayed that investigation of this case be transferred to C.B.I. or some other independent agency and this Court should monitor the investigation.

5. We have heard Mr. Jha, learned counsel appearing for the petitioner. Mr. Jha made a serious grievance that even after the transfer of investigation, the investigation has not been

conducted properly. He has submitted that statements of Sunil Pinto, Sachin Gondane and Manoj Sharma though allegedly recorded by the police have not been forwarded by the police to the Court alongwith the chargesheet. He submitted that admittedly, witness Sunil Pinto has deposed that his eye brows were shaved at the instance of Bala Patil by one Manoj Sharma. He has also stated that Ghanashyam Kori was assaulted and he was taken away in the vehicle on 19.5.2005. It is submitted that it was therefore necessary for investigating agency to forward this statement alongwith the chargesheet. Similarly, the statement of Sachin Gondane and Manoj Sharma ought to have been forwarded and inasmuch as this is not done, the investigation is suspect and this Court should transfer the case to C.B.I.

6. We have also heard learned APP. The learned APP has drawn our attention to the affidavit of Sudhakar Dashrath Tryambake, Deputy Commissioner of Police, Zone-IV. It is stated in the affidavit that statements of Sachin Gondane and Sunil Pinto have been recorded. The gist of the statement is also stated in the affidavit. It is further submitted that the investigation reveals that on 19.8.2005, Mr. Ghanashyam Kori was at his residence and on 20.8.2005,

he was working at his place of work and the incident of murder has taken place in the early morning of 21.8.2005 and this fact is corroborated by the statements of various witnesses such as the relatives of the deceased, the employer and the workers, who were working alongwith him. It is, further stated that therefore the statements of Sachin Gondane and Sunil @ Pinto Kalika Prasad Dubey were not material and therefore, they were not forwarded alongwith the chargesheet to the Court. The learned APP has stated that even Manoj Kanta Sharma's statement has been recorded and it is also on similar lines.

7. Considering the fact that the investigation is carried out as directed by this Court by D.C.P. Zone-IV under the direct supervision of the Commissioner of Police and having regard to the affidavit filed by D.C.P. Zone-IV and also considering the fact that chargesheet has already been filed, in our opinion, no case is made out for transfer of investigation to C.B.I. It will however be open to the petitioner to examine Sachin Gondane, Manoj Kanta Sharma and Sunil Pinto as defence witnesses, if she so desires. The petitioner can make an application to the trial court for copies of the statements of these 3 witnesses and the trial court

may pass appropriate order thereon in accordance with law. Needless to say that it will be open to the petitioner to take whatever advantage which she can from the fact that these 3 statements have not been forwarded alongwith the chargesheet. We have, however, not expressed any opinion on this aspect. Needless to say that if the trial court feels that these statements have not been forwarded with an oblique motive, the trial court will draw an adverse inference from that. While disposing of this petition, we make it clear that all contentions of both sides are kept open.

8. The petition is disposed of accordingly.

[SMT. RANJANA DESAI, J.]

[ANOO V. MOHTA, J.]